

Amendment No. 1 to HB1678

Jones U
Signature of Sponsor

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Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 1263*

House Bill No. 1678

By deleting all language following the caption and by substituting instead the following language:

WHEREAS, the General Assembly finds that adult-oriented establishments, as a category of establishments, have deleterious secondary effects and are often associated with illicit sexual activities, crime, and adverse effects on surrounding properties; and

WHEREAS, the General Assembly desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from crime; preserve the quality of life; preserve the character of neighborhoods and deter the spread of urban blight; and

WHEREAS, it is not the intent of this act to suppress any speech activities protected by the United States or Tennessee constitutions, but to enact legislation to further content-neutral governmental interests, to wit, the controlling of secondary effects of adult-oriented/sexually-oriented establishments; and

WHEREAS, based on the findings and evidentiary foundation concerning secondary effects presented in hearings and in reports made available to the General Assembly, and in the cases of *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 427 U.S. 50 (1976), *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *Deja Vu of Nashville, Inc. v. Metro. Gov't of Nashville and Davidson County*, 466 F.3d 391 (6th Cir. 2006); *Jakes, Ltd., Inc. v. City of Coates*, 284 F.3d 884 (8th Cir. 2002); *729, Inc. v. Kenton County*, 2006 WL 2842884 (E.D. Ky. 2006); *Deja Vu of Cincinnati, L.L.C. v. Union Twp. Bd. of Trs.*, 411 F.3d 777 (6th Cir. 2005) (en banc); *Fantasy Ranch, Inc. v. City of Arlington*, 459 F.3d 546 (5th Cir. 2006); *City of Chicago v.*

Pooh Bah Enterprises, Inc., 2006 WL 2827608 (Ill. 2006); Sensations, Inc. v. City of Grand Rapids, 2006 WL 2504388 (W.D. Mich. 2006); Illinois One News, Inc. v. City of Marshall, 477 F.3d 461 (7th Cir. 2007); Andy's Restaurant & Lounge, Inc. v. City of Gary, 466 F.3d 550 (7th Cir. 2006); 181 South, Inc. v. Fischer, 454 F.3d 228 (3rd Cir. 2006); Silver Video USA, Inc. v. Summers, 2006 WL 3114220 (Tenn. Ct. App. 2006); H and A Land Corp. v. City of Kennedale, 2007 WL 531982 (5th Cir. Feb. 22, 2007); Z.J. Gifts D-2, L.L.C. v. City of Aurora, 136 F.3d 683 (10th Cir. 1998); ILQ investments, Inc. v. City of Rochester, 25 F.3d 1413 (8th Cir. 1994); Kentucky Restaurant Concepts, Inc. v. City of Louisville, 209 F. Supp. 2d 672 (W.D. Ky. 2002); World Wide Video of Washington, Inc. v. City of Spokane, 368 F.3d 1186 (9th Cir. 2004); Deja Vu of Nashville, Inc., et al. v. Metro. Gov't of Nashville and Davidson County, 274 F.3d 377 (6th Cir. 2001); Ben's Bar, Inc. v. Village of Somerset, 316 F.3d 702 (7th Cir. 2003); Ctr. for Fair Public Policy v. Maricopa County, 336 F.3d 1153 (9th Cir. 2003); Bigg Wolf Discount Video Sales, Inc. v. Montgomery County, 256 F. Supp. 2d 385 (D. Md. 2003); Gammoh v. City of La Habra, 395 F.3d 1114 (9th Cir. 2005); DLS, Inc. v. City of Chattanooga, 107 F.3d 403 (6th Cir. 1997); Currence v. City of Cincinnati, 28 Fed. Appx. 438 (6th Cir. Jan. 24, 2002); Broadway Books v. Roberts, 642 F. Supp. 486 (E.D. Tenn. 1986); Bright Lights, inc. v. City of Newport, 830 F. Supp. 378 (E.D. Ky. 1993); Richland Bookmart v. Nichols, 137 F.3d 435 (6th Cir. 1998); In re Tennessee Public Indecency Statute, 172 F.3d 873 (6th Cir. Jan. 13, 1999) (table); Bamon Corp. v. City of Dayton, 923 F.2d 470 (6th Cir. 1991); Triplett Grille, Inc. v. City of Akron, 40 F.3d 129 (6th Cir. 1994); Lady J. Lingerie, Inc. v. City of Jacksonville, 176 F.3d 1358 (11th Cir. 1999), Commonwealth v. Jameson, 2006 WL 3386489 (Ky. 2006); and based upon secondary effects reports, including, but not limited to, Austin, Texas - 1986; Indianapolis, Indiana - 1984; Garden Grove, California - 1991; Houston, Texas - 1983, 1997; Phoenix, Arizona - 1979, 1995-98; Chattanooga, Tennessee - 1999-2003; Los Angeles, California - 1977; Whittier, California - 1978; Spokane, Washington - 2001; St. Cloud, Minnesota - 1994; Littleton, Colorado - 2004; Oklahoma City, Oklahoma - 1986; Dallas, Texas - 1997; Kennedale, Texas - 2005;

Greensboro, North Carolina - 2003; Amarillo, Texas - 1977; New York, New York Times Square - 1994; the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota); and Dallas/Fort Worth, Texas 2004; the General Assembly finds that:

(1) Adult-oriented establishments, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation. Such businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses; and

(2) Each of the foregoing negative secondary effects constitutes a harm which the state has a substantial government interest in preventing and/or abating. This interest, which is the state's regulatory rationale, exists independent of any comparative analysis between sexually-oriented and non-sexually-oriented businesses. Additionally, the state's interest in regulating sexually oriented businesses extends to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the state. The cases and documentation relied on in this act are reasonably believed to be relevant to said secondary effects; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE;

SECTION 1. Tennessee Code Annotated, Title 7, Chapter 51, Part 14, is amended by adding the following language as a new section:

Section 7-51-1407.

(a) An adult-oriented establishment shall not locate within one thousand feet (1,000') of a child care facility, a private, public, or charter school, a public park, a residence, or a place of worship. For the purposes of this section, measurements shall be made in a straight line in all directions, without regard to intervening structures or

objects, from the nearest point on the property line of a parcel containing an adult-oriented establishment to the nearest point on the property line of a parcel containing a child care facility, a private, public, or charter school, a public park, a residence, or a place of worship.

(b) The provisions of this section shall not apply to an adult oriented business located in an otherwise prohibited location in operation on the effective date of this act and such business activity shall be deemed an existing use of such property provided that such business remains in continuous operation as an adult oriented business regardless of change of ownership.

SECTION 2. Tennessee Code Annotated, Section 7-51-1406, is amended by deleting the section in its entirety and by substituting instead the following:

7-51-1406. Nothing in this part shall preempt an ordinance, regulation, restriction or license that was lawfully adopted or issued by a political subdivision prior to the enactment of this act or prevent or preempt a political subdivision in this state from enacting and enforcing in the future other lawful and reasonable restrictions, regulations, licensing, zoning or other civil or administrative provisions concerning the location, configuration, code compliance or other business operations or requirements of adult-oriented establishments and sexually-oriented businesses.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. This act shall take effect July 1, 2007, the public welfare requiring it.